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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8
9 UNITED STATES OF AMERICA,
10 Plaintiff,
11 v.
12 ALEXANDER KOSTAN,
13 Defendant.

Case Number: 2:21-cr-00081-

APG-DJA-1

SENTENCING MEMORANDUM

14 Comes now Defendant Alexander Kostan, by and through her counsel, Robert L.
15 Langford, Esq., and respectfully submits this Sentencing Memorandum, pursuant to Fed. R.
16 Crim. P. 12.1(a).

17 This Sentencing Memorandum is based upon on all the pleadings and papers on file
18 herein, the attached Memorandum of Points and Authorities, and such oral argument as the
19 Court may entertain at the time set for sentencing.

20 DATED this 14th day of July, 2021.

21 /s/ Robert L. Langford, Esq.

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MEMORANDUM OF POINTS AND AUTHORITIES

Alexander Kostan herein submits to the Court that the sentence recommended in the PSR, of three years' probation, including six months of home confinement, mandatory joint and several restitution of \$71,335.72, and a mandatory assessment of \$100, is an appropriate one to serve the goals set out in 18 U.S.C. § 3553(a)(2).

1. FACTS AND PROCEDURAL HISTORY

On May 30, 2020, Defendant Kostan, together with a large crowd, participated in what was initially – and largely – a peaceful protest in the general area of downtown Las Vegas, in support of a nationwide movement to support efforts to reform the criminal justice system, and in opposition to civil rights abuses.

Regrettably, as the protest lasted into the evening, some members of the protest began to exceed the scope of a peaceful protest, in part by taking out their frustrations on government property. Ms. Kostan was one of these. At approximately 10:20 p.m., a portion of the crowd arrived near the Foley Federal Building, at 333 South Las Vegas Boulevard. Some members of the group began to deface the Building, with graffiti, spray painted obscenities and anti-police slogans, and multiple small fires in the landscaping around the building.

Ms. Kostan stipulates in the Plea Agreement that, “along with multiple individuals, [Kostan] went to the east entrance of the Foley Federal Building . . . and threw paint on the windows, repeatedly kicked the windows and doors, and broke the windows with hammers, metal bars, and the metal letters torn off from the sign that read, ‘FOLEY FEDERAL BUILDING UNITED STATES COURTHOUSE.’” Specifically, as noted in the PSR, Ms. Kostan’s conduct was primarily that she kicked at windows of the building.

1 On or about August 7, 2020, Ms. Kostan was arrested and charged in this matter.
2 Shortly thereafter, on August 11, 2020, Ms. Kostan was released on pretrial supervision
3 conditions. As noted in the PSR, Ms. Kostan has substantially complied with these
4 conditions, with only an occasional absence from counseling noted. PSR ¶ 8.

5 Eventually, on April 20, 2021, the parties in this matter entered a Plea Agreement,
6 and Ms. Kostan changed his plea by pleading guilty to one count of Depredation Against
7 Property of the United States, in violation of 18 U.S.C. §§ 1361 and 1362.

8 **2. PERSONAL FACTS AND CIRCUMSTANCES**

9 As described accurately in the PSR, Ms. Kostan was born in Mayfield Ohio,
10 December 31, 1998. ¶ 47. Ms. Kostan's parents divorced, when she was 13 years of age,
11 and prior to that, during 2008, Ms. Kostan moved with her mother to Las Vegas. *Id.* ¶ 50.

12 Although she describes her childhood as "alright," PSR ¶ 49, Ms. Kostan in fact
13 suffered significant physical and mental abuse at her father's hand, in addition to
14 witnessing similar abuse perpetrated against her mother. *Id.* Ms. Kostan attributes this
15 abuse to her father's inability to accept her gender and sexuality.

16 As is unfortunately common, Ms. Kostan now suffers from mental and emotional
17 consequences of that abuse, in addition to diagnosed gender dysmorphia. Ms. Kostan
18 anticipates undergoing surgeries necessary to complete her transition in the near future and
19 is optimistic that these will assist her in coping with gender dysmorphia and generally
20 allow her to lead a happier life.

21 Ms. Kostan graduated high school from Las Vegas Academy of the Arts in 2017,
22 and subsequently attended UNLV where she earned her bachelor's degree in only two
23 years, graduating in December 2019 with a degree in Gender and Sexuality Studies.

1 Since graduating from UNLV in December 2019, Ms. Kostan has, to the best of
2 her ability, remained gainfully employed. Given the circumstances of the COVID-19
3 pandemic, which began only two to three months after her graduation, that has presented
4 Ms. Kostan with a very challenging employment environment. However, Ms. Kostan has
5 maintained employment throughout 2021, albeit at several different places of work.
6

7 Ms. Kostan has a stable living environment with longtime roommates, and is
8 active in several community organizations in support of criminal justice reform, civil
9 rights, and LGBTQ rights by providing direct services to those affected and via political
10 advocacy. These organizations include PLAN, Mass Liberation Project, Advocate for
11 Youth, and The LGBTQ Center of Southern Nevada.
12

13 Ms. Kostan has very little previous interaction with the criminal justice system.
14 As accurately conveyed in the PSR, she has been convicted of 4 traffic infractions, and one
15 misdemeanor trespass in the Las Vegas Municipal court. PSR ¶¶ 36 – 40.
16

17 Ms. Kostan has active relationships with family and friends in Las Vegas and
18 Nevada, with a wide network of friends and supportive family relationships to rely on.
19 With the support of those friends and family, Ms. Kostan intends to attend graduate school.
20

3. ARGUMENT

21 The recommended sentence in the PSR is appropriate, and adequate to fulfill the
22 goals laid out in federal sentencing law. A sentence of three years' probation, including six
23 months of home confinement, will adequately punish Ms. Kostan for her actions, while
24 taking into account her acceptance of responsibility.
25

26 The parties stipulate that an offense level of 12 is correct, and Ms. Kostan's
27 criminal history score is zero, the category therefore I. As the Court is no doubt aware, the
28

1 table therefore establishes a guideline range of 6 – 12 months, Zone B. The government has
2 agreed to recommend a sentence at the low end of whatever range the Court determines is
3 correct.

4 However, as discussed in the PSR, a custodial sentence would be inappropriate
5 harsh under these circumstances. Ms. Kostan participated in what was intended as a
6 peaceful protest, and what for the large part, was a peaceful protest. Regrettably, Ms.
7 Kostan participated in a portion of the events that was certainly not peaceful. A review of
8 her personal history reveals this action was deeply out of character for a person who has
9 achieved educationally, and who participates actively in community organizations in an
10 effort to effect change in her community through the correct productive means and
11 channels. Ms. Kostan will suffer significant consequences as a result of the fact of the
12 conviction in this case, likely in terms of her educational and employment ambitions, and
13 certainly economic repercussions in light of the required restitution order. In addition to
14 these, a sentence of probation, together with home confinement, is an adequate punishment
15 to serve the goals of deterrence and rehabilitation.

16 In a related case, *U.S.A. v. Lewis*, 2:21-cr-00044, the defendant pleaded guilty to
17 one count of Depredation Against Property of the United States, and on June 1, 2021, was
18 sentenced by Judge Dorsey, in the District of Nevada, to a three-year term of probation
19 with six months of home confinement, and \$71,335.52 in restitution.

20 Ms. Kostan is a young person, with high ambitions to change society in ways she
21 hopes will increase the fairness and equity of our systems and government. Of course, her
22 actions giving rise to this matter did not seek to affect that change in any appropriate way,
23 and Ms. Kostan has serious regrets in that regard, leading her to accept responsibility by
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pleading guilty.

All of which is respectfully submitted this 14th day of July, 2021.

/s/ Robert L. Langford, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July, 2021, I electronically filed the foregoing **SENTENCING MEMORANDUM** with the Clerk of Court using the CM/ECF system, which will cause the document to be served upon the following counsel of record in this case:

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/s/ Matthew J. Rashbrook
An Employee of Robert L. Langford &
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